

REMARKS/ARGUMENTS

Applicant has amended claim 1 to more accurately define the invention claimed.

Seifert (US Patent No. 5,035,348) discloses a container comprising a flexible fluid-containing vessel which has a seal that seals a top wall of the vessel to a bottom wall and is shaped to concentrate in a region thereof forces resulting from pressure generated by applying a force to the container. The vessel is first sealed at one end by melting the vessel with a heat sealer. Next, a liquid is poured into the vessel and the open end of the vessel is then also sealed by melting the vessel with a heat sealer. In one embodiment, a saturable end-piece is attached to the end of the vessel. In Seifert, both ends of the container must be physically heat sealed by melting the vessel for its intended purpose. Without either of the seals at both ends, the disclosed container would be unsatisfactory for its intended purpose.

Bainbridge et al. (US Patent No. 1,641,408) discloses a container formed from a rolled sheet of paper. In one embodiment, a row of perforation, or similar paper weakening means, is cut through the sheet along a line parallel to the top of the sheet.

Applicant's invention is a tube filling process for liquid filled cotton swabs comprising the steps of: (1) loading empty plastic tubes into a fixture; (2) sealing one end of said plastic tubes while leaving the other end of the plastic tubes open throughout the process; (3) injecting a first substance into said plastic tubes; and (4) affixing an applicator tip to an end of said plastic tubes. The empty plastic tubes must first be loaded into a fixture. In addition, only one end of the plastic tube is sealed. The other end of the plastic tube remains open at the completion of the process. Furthermore, the first substance is injected into the plastic tubes and not simply poured into the plastic tubes.

In one embodiment, a second substance such as silicone is injected into the plastic tube. The second substance is disposed on top of the first substance to prevent evaporation of the first substance. This eliminates the need for sealing the open end of the plastic tube. Furthermore, due to the physical property of the silicone, as the first substance expands and contracts due to temperature changes, the silicone will move with the expanding or contracting first substance to maintain a constant pressure and seal on top of the first substance.

The step of removing excess amount of the substance from the plastic tubes is to create equal heights of the substance in the plastic tubes. Essentially, it is for aesthetic purposes as well as for quality control purposes. This step is not for allowing the forming of a better seal at the container end as suggested by the examiner since the end of the container is never sealed. The end of the container remains open at the end of the process.

The use of the second substance, namely the silicone, is to prevent the evaporation of the first substance and to eliminate the need for sealing the open end of the plastic tube. It is not to enable the packaging of mixable products as suggested by the examiner. On the contrary, it is desirable that the second substance does not mix with the first substance in the plastic tube. Therefore, the inert substance, silicone, is selected to achieve this purpose.

The centrifuge step is utilized to move the first substance to the sealed end of the plastic tube and force any trapped air in the plastic tube and in the first substance itself out of the plastic tube. This step is not utilized to mix the substances in the plastic tube.

One of ordinary skill in the art at the time the invention was made would not have been motivated to make the proposed modification. There is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art,

to modify the reference or to combine reference teachings. Since the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, there is no suggestion or motivation to make the proposed modification. Furthermore, the proposed modification or combination of the prior art would also change the principle of operation of the prior art invention being modified, the teachings of the references are not sufficient to render the claims prima facie obvious. The references actually teach away from applicant's invention and render prior art unsatisfactory for intended purpose of applicant's invention. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Examiner had used improper hindsight in arriving at the rejection under 35 U.S.C. §103. The level of skill in the art cannot be relied upon to provide the suggestion to combine references. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.

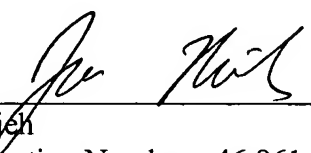
In addition, there is no reasonable expectation of success, since modification of Seifert by only sealing one end would render the container unsatisfactory for its intended purpose.

The prior art reference also does not teach or suggest all the claim limitations.

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Applicant hereby submits that the claim rejections under 35 U.S.C. §103(a) have all been overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,




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